

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 791

95TH GENERAL ASSEMBLY

2010

4351S.07T

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## AN ACT

To repeal sections 204.300, 204.472, 204.571, and 250.233, RSMo, and to enact in lieu thereof five new sections relating to utilities.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 204.300, 204.472, 204.571, and 250.233, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections  
3 204.300, 204.472, 204.571, 250.233, and 393.320, to read as follows:

204.300. 1. In all counties except counties of the first classification which  
2 have a charter form of government and which contain all or any portion of a city  
3 with a population of three hundred fifty thousand or more inhabitants, the  
4 governing body of the county, by resolution, order, or ordinance, shall appoint five  
5 trustees, the majority of whom shall reside within the boundaries of the district.  
6 In the event the district extends into any county bordering the county in which  
7 the greater portion of the district lies, the presiding commissioner or other chief  
8 executive officer of the adjoining county shall be an additional member of the  
9 appointed board of trustees. The trustees may be paid reasonable compensation  
10 by the district for their services; except that, any compensation schedule shall be  
11 approved by resolution of the board of trustees. The board of trustees shall be  
12 responsible for the control and operation of the sewer district. The term of each  
13 board member shall be five years; except that, members of the governing body of  
14 the county sitting upon the board shall not serve beyond the expiration of their  
15 term as members of such governing body of the county. The first board of  
16 trustees shall be appointed for terms ranging from one to five years so as to

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 establish one vacancy per year thereafter. **If the governing body of the**  
18 **county with the right of appointment under this subsection fails to**  
19 **appoint a trustee to fill a vacancy on the board within sixty days after**  
20 **receiving written notice from the common sewer district of the**  
21 **existence of such vacancy, then the vacancy may be filled by a majority**  
22 **of the remaining members then in office of the board of trustees of such**  
23 **common sewer district.** The trustees may be paid reasonable compensation  
24 by the district for their services; except that, any compensation schedule shall be  
25 approved by resolution, order, or ordinance of the governing body of the  
26 county. Any and all expenses incurred in the performance of their duties shall  
27 be reimbursed by the district. The board of trustees shall have the power to  
28 employ and fix the compensation of such staff as may be necessary to discharge  
29 the business and purposes of the district, including clerks, attorneys,  
30 administrative assistants, and any other necessary personnel. The board of  
31 trustees shall select a treasurer, who may be either a member of the board of  
32 trustees or another qualified individual. The treasurer selected by the board  
33 shall give such bond as may be required by the board of trustees. The board of  
34 trustees shall appoint the sewer engineer for the county in which the greater part  
35 of the district lies as chief engineer for the district, and the sewer engineer shall  
36 have the same powers, responsibilities and duties in regard to planning,  
37 construction and maintenance of the sewers, and treatment facilities of the  
38 district as he now has by virtue of law in regard to the sewer facilities within the  
39 county for which he is elected. If there is no sewer engineer in the county in  
40 which the greater part of the district lies, the board of trustees may employ a  
41 registered professional engineer as chief engineer for the district under such  
42 terms and conditions as may be necessary to discharge the business and purposes  
43 of the district. The provisions of this subsection shall not apply to any county of  
44 the first classification which has a charter form of government and which  
45 contains all or any portion of a city with a population of three hundred fifty  
46 thousand or more inhabitants.

47         2. In any county of the first classification which has a charter form of  
48 government and which contains all or any portion of a city with a population of  
49 three hundred fifty thousand or more inhabitants, and in any county of the first  
50 classification without a charter form of government and which has a population  
51 of more than sixty-three thousand seven hundred but less than seventy-five  
52 thousand, there shall be ~~[an eight-member]~~ **a ten-member** board of trustees to

53 consist of the county executive, the mayors of the [four] **five** cities constituting  
54 the largest users by flow during the previous fiscal year, the mayors of [two]  
55 **three** cities which are not among the [four] **five** largest users and who are  
56 members of the advisory board of the district established pursuant to section  
57 204.310, and one member of the county legislature to be appointed by the county  
58 executive, with the concurrence of the county legislature. If the county executive  
59 does not appoint such members of the county legislature to the board of trustees  
60 within sixty days, the county legislature shall make the appointments. The  
61 advisory board members shall be appointed annually by the advisory board. In  
62 the event the district extends into any county bordering the county in which the  
63 greater portion of the district lies, the number of members on the board of  
64 trustees shall be increased to a total of [nine] **eleven** and the presiding  
65 commissioner or county executive of the adjoining county shall be an additional  
66 member of the board of trustees. The trustees shall receive no compensation for  
67 their services, but may be compensated for their reasonable expenses normally  
68 incurred in the performance of their duties. The board of trustees may employ  
69 and fix the compensation of such staff as may be necessary to discharge the  
70 business and purposes of the district, including clerks, attorneys, administrative  
71 assistants, and any other necessary personnel. The board of trustees may employ  
72 and fix the duties and compensation of an administrator for the district. The  
73 administrator shall be the chief executive officer of the district subject to the  
74 supervision and direction of the board of trustees and shall exercise the powers,  
75 responsibilities and duties heretofore exercised by the chief engineer prior to  
76 September 28, 1983. The administrator of the district may, with the approval of  
77 the board of trustees, retain consulting engineers for the district under such  
78 terms and conditions as may be necessary to discharge the business and purposes  
79 of the district. The provisions of this subsection shall only apply to counties of  
80 the first classification which have a charter form of government and which  
81 contain all or any portion of a city with a population of three hundred fifty  
82 thousand or more inhabitants.

204.472. 1. **(1)** Whenever all or any part of a territory located within a  
2 sewer district that is located in any county of the third classification without a  
3 township form of government and with more than forty thousand eight hundred  
4 but less than forty thousand nine hundred inhabitants is included by annexation  
5 within the corporate limits of any city of the third classification with more than  
6 sixteen thousand six hundred but less than sixteen thousand seven hundred

7 inhabitants, but is not receiving sewer service from such district or city at the  
8 time of such annexation, the city and the board of trustees of the district may,  
9 within six months after such annexation becomes effective, develop an agreement  
10 to provide sewer service to the annexed territory. Such an agreement may also  
11 be developed for territory that was annexed between January 1, 1996, and August  
12 28, 2002, but was not receiving sewer service from such district or such city on  
13 August 28, 2002. For the purposes of this section, "not receiving sewer service"  
14 shall mean that no sewer services are being sold within the annexed territory by  
15 such district or city. If the city and the board reach an agreement that detaches  
16 any territory from such district, the agreement shall be submitted to the circuit  
17 court having jurisdiction over the major portion, and the circuit court shall make  
18 an order and judgment detaching the territory described in the agreement from  
19 the remainder of the district and stating the boundary lines of the district after  
20 such detachment. At such time that the circuit court's order and judgment  
21 becomes final, the clerk of the circuit court shall file certified copies of such order  
22 and judgment with the secretary of state and with the recorder of deeds and the  
23 county clerk of the county or counties in which the district is located. If an  
24 agreement is developed between a city and a sewer district pursuant to this  
25 subsection, subsections 2 to 8 of this section shall not apply to such agreement.

26 **(2) Whenever all or any part of a territory located within a sewer**  
27 **district that is located in any county of the third classification is**  
28 **included by annexation within the corporate limits of any city, but is**  
29 **not receiving sewer service from such district or city at the time of**  
30 **such annexation, the city and the board of trustees of the district may,**  
31 **within six months after such annexation becomes effective, develop an**  
32 **agreement to provide sewer service to the annexed territory. Such an**  
33 **agreement may also be developed for territory that was annexed prior**  
34 **to August 28, 2010, but was not receiving sewer service from such**  
35 **district or such city as of August 28, 2010. For the purposes of this**  
36 **section, "not receiving sewer service" shall mean that no sewer services**  
37 **are being sold within the annexed territory by such district or city. If**  
38 **the city and the board reach an agreement that detaches any territory**  
39 **from such district, the agreement shall be submitted to the circuit court**  
40 **having jurisdiction over the major portion, and the circuit court shall**  
41 **make an order and judgment detaching the territory described in the**  
42 **agreement from the remainder of the district and stating the boundary**

43 lines of the district after such detachment. At such time that the  
44 circuit court's order and judgment becomes final, the clerk of the  
45 circuit court shall file certified copies of such order and judgment with  
46 the secretary of state and with the recorder of deeds and the county  
47 clerk of the county or counties in which the district is located. If an  
48 agreement is developed between a city and a sewer district pursuant  
49 to this subsection, subsections 2 to 8 of this section shall not apply to  
50 such agreement.

51         2. In the event that the board of trustees of such district and the city  
52 cannot reach such an agreement, an application may be made by the board or the  
53 city to the circuit court requesting that three commissioners develop such an  
54 agreement. Such application shall include the name of one commissioner  
55 appointed by the applying party. The second party shall appoint one  
56 commissioner within thirty days of the service of the application upon the second  
57 party. If the second party fails to appoint a commissioner within such time  
58 period, the circuit court shall appoint a commissioner on behalf of the second  
59 party. Such two named commissioners may agree to appoint a third disinterested  
60 commissioner within thirty days after the appointment of the second  
61 commissioner. In the event that the two named commissioners cannot agree on  
62 or fail to appoint the third disinterested commissioner within thirty days after  
63 the appointment of the second commissioner, the circuit court shall appoint the  
64 third disinterested commissioner.

65         3. Upon the filing of such application and the appointment of three such  
66 commissioners, the circuit court shall set a time for one or more hearings and  
67 shall order a public notice including the nature of the application, the annexed  
68 area affected, the names of the commissioners, and the time and place of such  
69 hearings, to be published for three weeks consecutively in a newspaper published  
70 in the county in which the application is pending, the last publication to be not  
71 more than seven days before the date set for the first hearing.

72         4. The commissioners shall develop an agreement between the district and  
73 the city to provide sewer service to the annexed territory. In developing the  
74 agreement, the commissioners shall consider information presented to them at  
75 hearings and any other information at their disposal including, but not limited  
76 to:

77             (1) The estimated future loss of revenue and costs for the sewer district  
78 related to the agreement;

79           (2) The amount of indebtedness of the sewer district within the annexed  
80 territory;

81           (3) Any contractual obligations of the sewer district within the annexed  
82 area; and

83           (4) The effect of the agreement on the sewer rates of the district.

84 The agreement shall also include a recommendation for the apportionment of  
85 costs incurred pursuant to subsections 2 to 8 of this section, including reasonable  
86 compensation for the commissioners, between the city and the district.

87           5. If the circuit court finds that the agreement provides for necessary  
88 sewer service in the annexed territory, then such agreement shall be fully  
89 effective upon approval by the circuit court. The circuit court shall also review  
90 the recommended apportionment of court costs incurred and the reasonable  
91 compensation for the commissioners and affirm or modify such recommendations.

92           6. The order and judgment of the circuit court shall be subject to appeal  
93 as provided by law.

94           7. If the circuit court approves a detachment as part of the territorial  
95 agreement, it shall make its order and judgment detaching the territory described  
96 in the application from the remainder of the district and stating the boundary  
97 lines of the district after such detachment.

98           8. At such time that the circuit court's order and judgment becomes final,  
99 the clerk of the circuit court shall file certified copies of such order and judgment  
100 with the secretary of state and with the recorder of deeds and the county clerk of  
101 the county or counties in which the district is located.

102           9. The proportion of the sum of all outstanding bonds and debt, with  
103 interest thereon, that is required to be paid to the sewer district pursuant to this  
104 section, shall be the same as the proportion of the assessed valuation of the real  
105 and tangible personal property within the area sought to be detached bears to the  
106 assessed valuation of all of the real and tangible personal property within the  
107 entire area of the sewer district.

204.571. An authorized representative, not a member of the common  
2 sewer district's advisory board under section 204.310, from each political  
3 subdivision which lies partially within a sewer subdistrict formed pursuant to  
4 sections 204.565 to 204.573 and which operates or is served by a sewage collection  
5 system, together with the representatives of all other such political subdivisions  
6 and of each county having territory within the subdistrict, shall constitute an  
7 advisory board for the subdistrict. The advisory board shall organize by electing

8 one of its members as chairman, one as vice chairman, and one as a  
9 representative to the common sewer district's advisory board formed pursuant to  
10 section 204.310, **however, if the subdistrict advisory board consists of less**  
11 **than three members, then one subdistrict advisory board member may**  
12 **serve in more than one such capacity.** The board of trustees of the common  
13 sewer district shall keep the subdistrict advisory board informed, either directly  
14 or through the district advisory board, as to all phases of the planning and  
15 operations of the subdistrict, and the subdistrict advisory board shall make such  
16 recommendations to the common sewer district advisory board as the subdistrict  
17 board deems advisable with regard to the construction and operation of sewers  
18 and facilities in the subdistrict. **If a county or political subdivision with**  
19 **the right of appointment under this section fails to appoint any**  
20 **subdistrict advisory board member within sixty days after receiving a**  
21 **written request from the common sewer district, then the board of**  
22 **trustees of the common sewer district may make such appointment.**

250.233. Any city, town [or], village, **or sewer district** operating a  
2 sewerage system or waterworks may establish, make and collect charges for  
3 sewerage services, including tap-on fees. The charges may be set as a flat fee or  
4 based upon the amount of water supplied to the premises and shall be in addition  
5 to those charges which may be levied and collected for maintenance, repair and  
6 administration, including debt service expenses. Any private water company or  
7 public water supply district supplying water to the premises located within said  
8 city, town [or], village, **or sewer district** shall, at reasonable charge upon  
9 reasonable request, make available to such city, town [or], village, **or sewer**  
10 **district** its records and books so that such city, town [or], village, **or sewer**  
11 **district** may obtain therefrom such data as may be necessary to calculate the  
12 charges for sewer service. Prior to establishing any such sewer charges, public  
13 hearings shall be held thereon and at least thirty days' notice shall be given  
14 thereof.

**393.320. 1. As used in this section, the following terms mean:**

2 (1) "Large water public utility", a public utility that regularly  
3 provides water service or sewer service to more than eight thousand  
4 customer connections and that provides safe and adequate service but  
5 shall not include a sewer district established under Section 30(a),  
6 Article VI of the Missouri Constitution, sewer districts established  
7 under the provisions of chapter 204, 249, or 250, public water supply

8 districts established under the provisions of chapter 247, or  
9 municipalities that own water or sewer systems;

10 (2) "Small water utility", a public utility that regularly provides  
11 water service or sewer service to eight thousand or fewer customer  
12 connections; a water district established under the provisions of  
13 chapter 247 that regularly provides water or sewer service to eight  
14 thousand or fewer customer connections; a sewer district established  
15 under the provisions of chapter 204, 249, or 250 that regularly provides  
16 sewer service to eight thousand or fewer customer connections; or a  
17 water system or sewer system owned by a municipality that regularly  
18 provides water service or sewer service to eight thousand or fewer  
19 customer connections; and all other entities that regularly provide  
20 water service or sewer service to eight thousand or fewer customer  
21 connections.

22 2. The procedures contained in this section may be chosen by a  
23 large water public utility, and if so chosen shall be used by the public  
24 service commission to establish the ratemaking rate base of a small  
25 water utility during an acquisition.

26 3. (1) An appraisal shall be performed by three appraisers. One  
27 appraiser shall be appointed by the small water utility, one appraiser  
28 shall be appointed by the large water public utility, and the third  
29 appraiser shall be appointed by the two appraisers so appointed. Each  
30 of the appraisers shall be a disinterested person who is a certified  
31 general appraiser under chapter 339.

32 (2) The appraisers shall:

33 (a) Jointly prepare an appraisal of the fair market value of the  
34 water system and/or sewer system. The determination of fair market  
35 value shall be in accordance with Missouri law and with the Uniform  
36 Standards of Professional Appraisal Practice; and

37 (b) Return their appraisal, in writing, to the small water utility  
38 and large water public utility in a reasonable and timely manner.

39 (3) If all three appraisers cannot agree as to the appraised value,  
40 the appraisal, when signed by two of the appraisers, constitutes a good  
41 and valid appraisal.

42 4. Nothing in this section shall prohibit a party from declining  
43 to proceed with an acquisition or be deemed as establishing the final  
44 purchase price of an acquisition.

45           **5. (1) The lesser of the purchase price or the appraised value,**  
46 **together with the reasonable and prudent transaction, closing, and**  
47 **transition costs incurred by the large water public utility, shall**  
48 **constitute the ratemaking rate base for the small water utility as**  
49 **acquired by the acquiring large water public utility; provided, however,**  
50 **that if the small water utility is a public utility subject to chapter 386**  
51 **and the small water utility completed a rate case prior to the**  
52 **acquisition, the public service commission may select as the ratemaking**  
53 **rate base for the small water utility as acquired by the acquiring large**  
54 **water public utility a ratemaking rate base in between:**

55           **(a) The lesser of the purchase price or the appraised value,**  
56 **together with the reasonable and prudent transaction, closing, and**  
57 **transition costs incurred by the large water public utility unless such**  
58 **transaction, closing, and transition costs are elsewhere recoverable in**  
59 **rates; and**

60           **(b) The ratemaking rate base of the small water utility as**  
61 **ordered by the public service commission in the small water utility's**  
62 **last previous rate case as adjusted by improvements and depreciation**  
63 **reserve since the previous rate case together with the transaction,**  
64 **closing, and transition costs incurred by the large water public utility**  
65 **unless such transaction, closing, and transition costs are elsewhere**  
66 **recoverable in rates. If the small water utility and large water public**  
67 **utility proceed with the sale, any past due fees due to the state from the**  
68 **small water utility or its customers under chapter 640 or 644 shall be**  
69 **resolved prior to the transfer of ownership or the liability for such past**  
70 **due fees becomes the responsibility of the large water public**  
71 **utility. Such fees shall not be included in the large water public**  
72 **utility's rate base.**

73           **(2) The public service commission shall issue its decision**  
74 **establishing the ratemaking rate base of the small water utility in its**  
75 **order approving the acquisition.**

76           **6. Any new permit issued pursuant to chapters 640 and 644, when**  
77 **a small water utility is acquired by a large water public utility, shall**  
78 **include a plan to resolve all outstanding permit compliance**  
79 **issues. After the transfer of ownership, the acquiring large public**  
80 **water utility shall continue providing service to all customers that**  
81 **were served by the small water utility at the time of sale.**

82           7. This section is intended for the specific and unique purpose  
83 of determining the ratemaking rate base of small water utilities and  
84 shall be exclusively applied to large water public utilities in the  
85 acquisition of a small water utility. This section is not intended to  
86 apply beyond its specific purpose and shall not be construed in any  
87 manner to apply to electric corporations, natural gas corporations, or  
88 any other utility regulated by the public service commission.

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